

No. 11235

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

VICTOR H. ROSSETTI and FRANK P. DOHERTY,
co-executors of the estate of Genevieve Borlini Hill,
Appellants,

vs.

PETER S. HILL, JOANNE HILL, also known as
Joan A. Hill, PATRICIA HILL HARDER and
THE NORTHWESTERN MUTUAL LIFE IN-
SURANCE COMPANY,
Appellees.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

DEC 27 1946

PAUL H. O'BRIEN,
CLERK

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Answer in Interpleader Action of Peter B. Hill, et al.	10
Answer in Interpleader Action of Victor H. Rossetti, et al., etc.....	14
Appeal:	
Notice of	31
Order Staying Execution Upon.....	35
Supersedeas Undertaking	32
Bill of Interpleader.....	2
Certificate of Clerk.....	36 (c)
Conclusions of the Court.....	16
Findings of Fact and Conclusions of Law.....	23
Judgment	29
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	31
Order Staying Execution Upon Appeal.....	35
Permanent Injunction and Order Fixing Counsel Fees and Costs	7
Reporter's Transcript of Proceedings.....	37
Defendants' Exhibit A—Copy of Policy No. 3204489	39
Supersedeas Undertaking	32
Statement of Points on Which Appellants Intend to Rely on Appeal (Circuit Court).....	68

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Company:

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Los Angeles 13, California [1*]

In the District Court of the United States for the
Southern District of California
Central Division

No. 4462-M Civil

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a corporation,

Complainant,

vs.

PETER B. HILL; JOANNE HILL, also known as Joan A. Hill; PATRICIA HILL HARDER; VICTOR H. ROSSETTI and FRANK P. DOHERTY, co-executors of the estate of Genevieve Borlini Hill; DOE ONE; DOE TWO; DOE THREE and DOE FOUR,

Defendants.

BILL OF INTERPLEADER

To the Honorable Judges of the District Court of the United States, for the Southern District of California, Central Division:

The Northwestern Mutual Life Insurance Company, a corporation organized and existing under the laws of the State of Wisconsin, and a citizen of said State, brings this its bill of interpleader against the defendants above named, and each of [2] them, and alleges:

1. The ground upon which the jurisdiction of this court depends is as follows: This duly verified bill of interpleader is filed by complainant, an insurance corporation, resident and citizen of the State of Wisconsin, having in its possession money of the value of \$10,060.10 against certain adverse claimants, all of whom are citizens and residents of the State of California, and one or more

of whom reside within the Southern District of California, Central Division. That said claimants are severally claiming to be entitled to said sum of money now in the possession of claimant.

2. (a) The complainant, The Northwestern Mutual Life Insurance Company, is now and at all times herein mentioned has been a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen of said State.

(b) Defendants Victor H. Rossetti and Frank P. Doherty are the duly qualified and acting co-executors of the estate of Genevieve Borlini Hill now being probated in the County of Los Angeles, State of California, bearing Superior Court No. 239479.

(c) The remaining defendants and each of them are now and at all times herein mentioned have been residents in and citizens of the State of California.

3. Defendants Doe One, Doe Two, Doe Three and Doe Four are sued herein by fictitious names for the reason that their true names and capacities are unknown to complainant, and complainant will ask leave of this court to amend this bill of [3] interpleader by substituting their true names and capacities whenever the same shall be ascertained.

4. Complainant is now and at all times herein mentioned was authorized to engage in the business of life insurance in the State of California.

On or about December 2, 1942, complainant herein for and in consideration of the premiums paid and to be paid by one George A. Hill, Jr., and other considerations, issued to said George A. Hill, Jr., a certain contract of life insurance designated and bearing No. 3204489. One

Genevieve B. Hill was named as direct beneficiary of said policy of insurance. "Peter B. Hill, Joanne Hill and Patricia Hill Harder, children, share and share alike, the survivors or survivor" were named contingent beneficiaries of said policy of insurance. On or about November 24, 1944, said George A. Hill, Jr. died and proof of death as required by said insurance policy was duly submitted to complainant. On and after the death of said George A. Hill, Jr. the amount due on said insurance policy was and is \$10,060.10.

5. Defendants Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, have notified complainant that they claim the entire proceeds of said policy of insurance. A claim to the proceeds of said insurance has been filed with complainant by defendants Patricia Hill Harder and Joan A. Hill and Peter B. Hill.

6. As hereinbefore alleged, conflicting claims are being made upon complainant for and on account of said sum of \$10,060.10. Complainant admits its liability for said amount [4] of insurance upon the life of said George A. Hill, Jr. and alleges that the claims of said respective defendants and each of them are being made upon it in good faith by each of said defendants, and complainant cannot safely determine for itself which claims are right and lawful and cannot safely make payment of all or any part of said money to any of said defendants and under the circumstances is in danger of being subjected to a multiplicity of claims and actions on a single liability. Complainant makes no claim to any of said money and is indifferent to the claims or rights of said defendants. *Complaint* desires to pay said sum into the registry of this court to be disposed of in accordance

with the judgment thereof. This action has been brought by complainant without collusion as respects any of said defendants.

7. Contemporaneously with the commencement of this action complainant is paying into the registry of this court to await the judgment thereof the sum of \$10,060.10, which said sum constitutes all moneys held by complainant due by reason of said policy of insurance.

8. It was necessary for complainant to institute this action in order to avoid a multiplicity of suits and to avoid unnecessary costs, attorneys' fees and expenses of suit and to prevent irreparable damage to complainant. In order to institute this action it was necessary for complainant to employ and it has employed the attorneys now appearing on its behalf to prepare this bill of interpleader and to file and prosecute this action, and it has become and is liable to pay to them reasonable compensation for their services. All of said expenses have been incurred by [5] complainant in good faith and were necessitated by the conflicting claims of defendants herein.

Wherefore, complainant prays

1. That defendants, and each of them, be required to plead and litigate between themselves concerning the claims to the money held by complainant by reason of said policy of life insurance and herewith deposited into the registry of this court, and that defendants, and each of them, be required to set forth in full their interests and claims in and to said moneys.

2. That complainant be relieved and discharged from all liability under or in any way arising out of said policy of life insurance No. 3204489 or its possession of said sum of \$10,060.10; that defendants be required to surrender said policy of insurance to complainant and that

an order and decree of this court to that effect be made and entered herein.

3. That the court allow to complainant a reasonable sum as attorneys' fees incurred in the preparation and prosecution of this action and that such sum so allowed, together with complainant's costs and expenses herein be made a lien upon the moneys deposited herein subject to the order of the court.

4. That this court determine the validity and priority of the respective claims of the defendants herein, and each of them, and direct the disposition of the funds which remain after payment of complainant's costs, expenses and attorneys' fees has been made.

5. That a temporary restraining order and injunction be issued against the defendants, and each of them, restraining and enjoining said defendants, and each of them from taking, [6] maintaining or prosecuting any proceedings in any state or federal court other than this court based upon the claims to moneys heretofore held by complainant by reason of the said life insurance policy and deposited into the registry of this court.

6. That upon the return date specified in said temporary restraining order and injunction the same be made permanent and

7. That complainant have such other and further relief as to this court shall appear meet and proper in the premises.

O'MELVENY & MYERS
And L. M. WRIGHT
Attorneys for Complainant [7]

[Verified.]

[Endorsed]: Filed May 16, 1945. [8]

In the District Court of the United States for the
Southern District of California
Central Division

No. 4462M Civil

THE NORTHWESTERN MUTUAL LIFE INSUR-
ANCE COMPANY, a corporation,

Complainant,

vs.

PETER B. HILL; JOANNE HILL, also known as
Joan A. Hill; PATRICIA HILL HARDER; VIC-
TOR H. ROSSETTI and FRANK P. DOHERTY,
co-executors of the estate of Genevieve Borlini Hill;
DOE ONE; DOE TWO; DOE THREE and DOE
FOUR,

Defendants.

PERMANENT INJUNCTION AND ORDER
FIXING COUNSEL FEES AND COSTS

Complainant's order to show cause why the temporary restraining order herein should not be made permanent and complainant's costs and counsel fees allowed having duly and regularly come on for hearing before the Honorable Paul J. McCormick, Judge of the United States District Court in the courtroom in the Federal Building in the City of Los Angeles, State of California on the 25th day of June, 1945, complainant appearing by Messrs. O'Melveny & Myers and Lauren M. Wright, its counsel, defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and [9] Patricia Hill Harder appearing by Richard H. Forster, their attorney, and defendants Vic- tor H. Rossetti and Frank P. Doherty, co-executors of

the estate of Genevieve Borlini Hill appearing by Frank P. Doherty and Wm. R. Gallagher, their attorneys. All of the above mentioned defendants appeared voluntarily through their counsel and stipulated that the temporary restraining order herein be made permanent and that counsel fees for complainant's counsel might be fixed in the sum of \$250 and complainant's costs be fixed in the amount of \$14, and the court being fully advised in the premises and good cause appearing therefor, it is hereby ordered:

1. That the order of injunction heretofore made by this court on May 16, 1945 be and the same hereby is made permanent.

2. That defendants Peter B. Hill, Joanne Hill, also known as Joan A. Hill, Patricia Hill Harder, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, Doe One, Doe Two, Doe Three and Doe Four be and each of them is during the pendency of this action and permanently thereafter enjoined and restrained from instituting, commencing or prosecuting or causing to be instituted, commenced or prosecuted any suit, action or proceeding in any court of any state or in any federal court other than the above named court on account of life insurance policy No. 3204489 issued by complainant upon the life of George A. Hill, Jr., or for or on account of any money due or claimed to be due because of said life insurance policy.

3. That attorneys' fees for complainant's counsel are fixed in the amount of \$250 and complainant's costs are

fixed in the amount of \$14, and the Clerk is hereby ordered to pay over to O'Melveny & Myers and Lauren M. Wright as attorneys for complainant out of the amount heretofore deposited into the court, the [10] said sum of \$264.

4. That a copy of this injunction be served upon the named defendants and each of them by the Marshal of the United States District Court.

Dated: June 27th, 1945.

PAUL J. McCORMICK

Judge of the United States District Court, Southern
District of California, Central Division.

Approved as to form:

FRANK P. DOHERTY

WM. R. GALLAGHER

By Frank P. Doherty

B.B.

RICHARD H. FORSTER

By Richard H. *Foster*

Judgment entered Jun. 27, 1945. Docketed Jun. 27, 1945, Book 33, page 465. Edmund L. Smith, Clerk; by B. B. Hansen, Deputy.

[Endorsed]: Filed Jun. 27, 1945. [11]

[Title of District Court and Cause.]

ANSWER IN INTERPLEADER ACTION

Defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder answer the bill of interpleader herein and allege and admit as follows:

I.

These defendants admit the allegations of the bill of interpleader and consent to and approve the payment into the registry of the court the benefits due under the policy of life insurance referred to therein in the sum of \$10,060.10.

II.

On or about December 2nd, 1942, the complainant herein, the Northwestern Mutual Life Insurance Company, for [12] and in consideration of the premiums paid and to be paid by one George A. Hill, Jr., and other considerations, issued to said George A. Hill, Jr., a certain contract of life insurance designated and bearing No. 3204489. By subsequent designation by the insured one Genevieve B. Hill, wife of the insured, was named as direct beneficiary of said policy of insurance. Peter B. Hill, Joanne Hill and Patricia Hill Harder, children, share and share alike, the survivors or survivor, were named contingent beneficiaries of said policy of insurance. On or about November 24, 1944, said George A. Hill, Jr., died and proof of death as required by said insurance policy was duly submitted to complainant. On and after the death of said George A. Hill, Jr., the amount due on said insurance policy was and is \$10,060.10.

III.

Said contract of life insurance issued to George A. Hill, Jr., provides in part as follows:

11. "Subject to the rights of any Assignee, the Insured (1) may designate one or more Direct Beneficiaries if none be named herein, either with or without reservation of the right to revoke such designation; and (2) may designate one or more Contingent Beneficiaries whose interest shall be as expressed in this policy; and (3) may change any Direct Beneficiary not irrevocably designated and (4) may change any Contingent Beneficiary. If there be more than one Direct Beneficiary the interest of any deceased Direct Beneficiary, including any unpaid benefits due or to become due, shall pass to the surviving Direct Beneficiary or Beneficiaries, unless otherwise directed by the Insured with the consent of the Company. Upon the death of the last surviving [13] Direct Beneficiary the Contingent Beneficiary or Beneficiaries, if any, shall succeed to the interest of such Direct Beneficiary, including any unpaid benefits due or to become due."

IV.

The following provision on the back of the said policy is incorporated as part of said policy contract:

"Special Provisions Relating to Settlement When
This Policy Becomes Payable.

5. Upon the death of the last surviving Direct Beneficiary the then surviving Contingent Beneficiary or Beneficiaries shall succeed to the remaining benefits otherwise payable to such Direct Beneficiary, including any unpaid benefits due or to

become due, except that under Option "C" such remainder shall be limited to the stipulated installments then remaining unpaid; and except also that any proceeds then held under Option "A" shall, unless the designator of such surviving Contingent Beneficiary has directed payment under either Option "B", "C" or "D", be paid in one sum (a) immediately in case of any Contingent Beneficiary designated under Special Provisions, paragraph "1a" and (b) if and when, in case of a Contingent Beneficiary designated by the Insured, such proceeds shall have been held under Option "A" for thirty years after the Policy became payable. Where payment of such proceeds under either Option "B", "C" or "D" has been directed in lieu of payment in one sum, such elected option shall thereupon become effective."

V.

The said Direct Beneficiary of said policy of insurance, Genevieve B. Hill, died before receiving payment of any of the benefits of said insurance policy and the whole amount due in the sum of \$10,060.10 was at the time of her death and now is unpaid.

VI.

Upon the death of said Direct Beneficiary, Genevieve B. Hill, the contingent beneficiaries Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, children of said George A. Hill, Jr., who are defendants in this proceeding and all of whom survived the Direct

Beneficiary, succeeded to the interest of said Genevieve B. Hill, including any unpaid benefits due or to become due in accordance with the provisions of the said policy of insurance set forth in paragraph II above.

VII.

The defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, are entitled share and share alike, to all the benefits of the said policy of insurance, to wit, the sum of \$10,060.10, heretofore paid into this court by the complainant.

VIII.

The defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve B. Hill have no right or interest in or to the said benefits of the said policy of life insurance, to wit, the sum of \$10,060.10.

Wherefore, these defendants pray judgment declaring them to be the owners, share and share alike, of the fund deposited in the registry of the court in this action and requiring the clerk of the court to pay to these defendants, share and share alike, the net remaining proceeds of the said sum of \$10,060.10, and for any other and further relief deemed [15] proper by the court.

RICHARD H. FORSTER
Attorney for Defendants

[Verified.]

[Endorsed]: Filed Aug. 6, 1945. [16]

[Title of District Court and Cause.]

ANSWER IN INTERPLEADER ACTION

(of Victor H. Rossetti and Frank P. Doherty, as co-executors of the estate of Genevieve Borlini Hill)

Defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, by this their answer to the bill of interpleader herein as well as to the answer of defendants, Peter B. Hill, Joanne Hill, and Patricia Hill Harder, heretofore filed, admit, deny and allege as follows:

I.

Admit the allegations of the bill of interpleader.

II.

Admit the allegations of paragraphs II, III, IV and [17] and V of the answer of defendants, Peter B. Hill, Joanne Hill and Patricia Hill Harder.

III.

Allege that during the year 1942 George A. Hill, Jr., the insured under said life insurance policy, was a resident of California, and that negotiations for the issuance of said insurance policy were undertaken and concluded within California, and that said insurance policy was delivered to said insured within California.

IV.

Allege that following the death of said George A. Hill, Jr., the insured under said life insurance policy, proof of death as required by said insurance policy was duly and regularly submitted to and received by complainant a number of days prior to the death of Genevieve B. Hill, the direct beneficiary under said insurance policy, which death of said direct beneficiary occurred on or about January 2, 1945.

V.

Deny each and every allegation of paragraphs VI, VII and VIII of the answer of defendants, Peter B. Hill, Joanne Hill and Patricia Hill Harder, except that it is admitted that Peter B. Hill, Joanne Hill and Patricia Hill Harder were children of George A. Hill, Jr., and survived the direct beneficiary, Genevieve B. Hill.

VI.

That upon the death of said George A. Hill, Jr., the insured under said life insurance policy, the proceeds thereof became due and payable to Genevieve B. Hill, the direct beneficiary thereunder, during her lifetime; and the said Genevieve B. Hill during her lifetime acquired therein a vested interest; [18] that these defendants, as co-executors of the estate of said Genevieve B. Hill, are entitled to all of the benefits of said policy of life insurance, to-wit, the \$10,060.10 heretofore paid into Court by the complainant; that defendants, Peter B. Hill, Joanne Hill and Patricia Hill Harder have no right or interest in or to the proceeds or benefits of said policy of life insurance.

Wherefore, these defendants pray judgment declaring them as such co-executors to be the owners of the fund deposited in the registry of the Court in this action, and requiring the clerk of the Court to pay to these defendants, as such co-executors, the net remaining proceeds of said fund, and for such other and further relief as may be deemed proper by the Court.

LAWLER, FELIX & HALL

By John M. Hall

Attorneys for Defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill.

[Endorsed]: Filed Aug. 7, 1945. [19]

[Title of District Court and Cause.]

CONCLUSIONS OF THE COURT

This is an interpleader action relating to a policy of term life insurance issued by plaintiff company to George A. Hill, Jr., wherein one "Genevieve B. Hill, wife," was named by the insured as direct beneficiary of such policy. The contract of insurance also provided for contingent beneficiaries, and the insured named as such "Peter B. Hill, Joanne Hill, and Patricia Hill Harder, children, share & share alike, the survivors or survivor." Conflicting bona fide claims have been made by the executors of Genevieve B. Hill, deceased, and the designated Hill children to the insurance due under the policy by reason of the death of the insured, and the demise of Mrs. Hill approximately six weeks later, and before any benefits payable under the policy in suit had been made.

In order to avoid a multiplicity of suits on a single liability with the attendant consequences the plaintiff has deposited in the registry \$10,060.10, conceded by all parties to be the amount due under the policy to be paid in [39] settlement of the policy, No. 3204489, to such parties as the court should determine to be entitled to payment.

There can be no jurisdictional question in the action. Moreover, none is raised by any of the parties.

The question for decision is whether the proceeds of the policy should go to the widow's estate or to the contingent beneficiaries, namely, the children of the insured by a former marriage.

The contract of insurance under consideration was negotiated for and delivered in the State of California. Under such facts the policy must be interpreted and the

rights of the claimants to the benefits due or to become due under the terms of the policy will be governed by the law of the State of California. *Mutual Life Co. v. Johnson*, 293 U. S. 335; *Ruhlin v. New York Life Ins. Co.*, 304 U. S. 202; *Rosenthal v. New York Life Ins. Co.*, 304 U. S. 263.

The terms and provisions of the policy in suit constitute the measuring rod or denominator by which the court is to determine the rightful claimant to the amount now on deposit in the registry. See Section 10111, Insurance Code of the State of California.

The court must ascertain the intention of the insured gleaned from all parts of the policy read as a whole and reasonably and normally considered without any material alteration of the writing. If then the policy is clear in expressing the intention of the insured as to whom and in what manner persons designated by him shall succeed to the benefits of the policy, the court is bound to effectuate the insured's expressed purpose by deciding the case accordingly. *Northwestern Mutual Life Ins. Co. v. Fink*, (C. C. A. 6, 1941), 118 F. 2d 761. [40]

Preliminarily to examining the policy the undisputed facts of the case should be stated. They are as follows: Under date of December 2, 1942 the Northwestern Mutual Life Insurance Company duly issued its policy for \$10,000.00 on the life of George A. Hill, Jr. The policy gave the insured the right to change beneficiaries and also provided for the right of the insured to designate both direct and contingent beneficiaries at his option and choice. The policy when issued to Mr. Hill contained the designation of "his children Peter B., Joanne, and Patricia Hill, the direct beneficiaries, share and share alike, the survivors or survivor." There was no other beneficiary

named in the policy at the initial issuance of it. Subsequently, under date of January 26, 1944, Mr. Hill changed the direct beneficiary from his children to "Genevieve B. Hill, wife," and under the same date designated as contingent beneficiaries "Peter B. Hill, Joanne Hill and Patricia Hill Harder, children, share and share alike, the survivors or survivor." Hill, the insured, died on November 24, 1944. Due proof of his death was submitted to and received by the plaintiff insurance company. Thereafter, on January 2, 1945, the widow, Genevieve B. Hill, direct beneficiary, died without having made any election under paragraph 1a of the "special provisions" set out in the policy. This paragraph which follows another, whereby the insured is given the right before the policy becomes payable to elect payment of the then net proceeds under options specified in the policy, read:

"Privileges of Direct Beneficiary. 1a. If when this Policy becomes payable no such election by the Insured is then in force, the Direct Beneficiary or Beneficiaries may make such election in lieu of payment in one sum and upon such an election by the Direct Beneficiary or Beneficiaries the interest of any Contingent Beneficiary designated by the Insured shall terminate. The Direct Beneficiary or Beneficiaries may then, subject to change, designate a Contingent Beneficiary or Beneficiaries under the election so made." [41]

The executors of Mrs. Hill's estate earnestly argue that parts of the policy, including paragraph 1a, which are specified under the caption "Special provisions relating to settlement when this policy becomes payable", have no application to the situation presented in this case. We cannot agree with such contention.

It is obvious that the policy matures and therefore "becomes payable" upon the death of the insured. However the payments are to be made to such beneficiaries and in such manner as to carry out the intention of the insured as expressed in the policy under consideration. Paragraph 1a provides ways by which "the interest of any contingent beneficiary designated by the insured shall terminate." These quoted words connote an interest of the contingent beneficiaries, i. e., the children of the insured after the death of the insured under the situation which the undisputed evidence in this action discloses.

But the interest of the "Hill children" in the benefits of the policy due or to become due upon the death of the insured is not to be determined solely from the "Special provisions relating to settlement when this policy becomes payable."

To more certainly evaluate the meaning of the policy in suit as it pertains to those named therein as beneficiaries, consideration should be given to the insured's natural propensity to financially provide for and protect his widow during her lifetime, and, next, his own children, rather than her relations or creditors. He unmistakably manifested this attitude by primarily naming his children as sole beneficiaries of the policy, and upon realizing later conjugal obligations, substituting his wife as direct beneficiary but still regardful of his children's welfare also, he [42] simultaneously named them contingent beneficiaries.

But we are not left to inferences from the policy in concluding that the intention of the insured was to confine all unpaid benefits of the insurance contract to his wife firstly, and to his children if it became impossible because of her death for her to receive any such benefits. The

clearly expressed terms of the policy warrant no other conclusion.

Paragraph 11 of the "General Provisions" of the policy is a lengthy statement which relates to and deals with several distinct features of the contract of insurance in controversy and is for convenient reference in the memorandum filed by the executors of the estate of Genevieve B. Hill restated as Sentences (A), (B), (C), (D) and (E). The executors contend that the entire Paragraph 11 must be deemed to refer to a period ending with the insured's death—not to a period after the insured's death. We think such contention untenable upon analysis of the several subject matters contained in Paragraph 11. We are also of the opinion that all the sentences in Paragraph 11 have no necessary contextual meaning.

Sentence (E) has no application to the situation before us in this action and may be left out of consideration as immaterial. Sentence (A) is material here only in that it provides in "(2)" that the interest of contingent beneficiaries shall be as expressed in the policy. Sentences (B), (C) and (D) all relate to payments of benefits, but each of such sentences deals with specific and separate actualities. (B) is immaterial to this controversy as there is only one direct beneficiary in the policy in suit. Likewise (D) is of no effect in this action, but Sentence (C) is not only applicable to the situation before us, but clearly and [43] conclusively determines the right of the "Hill Children" to the unpaid benefits of the policy now in the registry of the court.

So-called Sentence (C) of the policy in suit is as follows:

“(C) Upon the death of the last surviving Direct Beneficiary the Contingent Beneficiary or Beneficiaries, if any, shall succeed to the interest of such Direct Beneficiary, including any unpaid benefits due or to become due.”

It is clear that this requirement reads directly and unequivocally upon the admitted and established situation before us in this action. Mrs. Hill was the last surviving direct beneficiary, and not having received during her lifetime the unpaid benefits due under the policy, the contingent beneficiaries, to-wit, the three “Hill Children” succeed to the unpaid benefits of the policy, which is the money remaining in the registry in this action.

There is nothing in any part of the policy in suit which can militate against our conclusion as to the decisive effect of Sentence (C) upon the situation before us in this action. On the contrary, the provisions of Paragraph 5 of the “Special Provisions Relating to Settlement when this Policy becomes Payable” are substantially identical with Sentence (C) of Paragraph 11 of the “General Provisions” of the policy and strengthen the accuracy of our conclusions in this case.

We think that under the terms and provisions of the policy in suit and in the light of the admitted facts and circumstances in proof in this action, the contingent beneficiaries and not the testamentary representatives of the deceased person who in her lifetime was the direct benefi-
[44] ciary in the contract of insurance are entitled share

and share alike to an award of the money deposited by the plaintiff insurance company in satisfaction of Policy No. 3204489 of the Northwestern Mutual Life Insurance Company.

The rights of the direct beneficiary upon the death of the insured are not to be ascertained or determined by fixed abstract rules which are not applicable to the factual situation before the court in the consideration of the specific contractual obligation in controversy, and for that reason many of the authorities cited in the memorandum of the executors have no application in the case at bar.

Findings of fact, conclusions of law and judgment for the amount now in the registry of this court, to-wit, \$9796.10, less any actually accrued costs of the Clerk, are ordered for the defendants Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, and against Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, deceased, with costs of suit to said "Hill children." Attorneys for defendants "Hill children" will prepare, serve and present within five days from notice of this ruling, findings of fact, conclusions of law and judgment in accordance with the views expressed in these written conclusions of the court.

Dated November 13, 1945.

PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Nov. 13, 1945. [45]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for trial before this court, sitting without a jury, on October 2nd, 1945. The complainant, The Northwestern Mutual Life Insurance Company, a corporation, represented by its attorneys, O'Melveny & Myers, having brought the interpleader action and having deposited in the registry of the court the sum of \$10,060.10, which was the amount due under the policy, hereinafter referred to, had been released from the case prior to the trial. Defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill and Patricia Hill Harder, were represented by their attorneys, Richard H. Forster and Chauncey E. Snow. The defendants, Victor H. Rossetti and Frank P. Doherty, co-executors [46] of the estate of Genevieve Borlini Hill, deceased, were represented by their attorneys, Lawler, Felix and Hall.

The court having heard the evidence and considered the and having filed herein written conclusions of the court, now [P.J.M. J.] stipulation of the parties \wedge finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. The complainant, The Northwestern Mutual Life Insurance Company, a corporation organized and existing under the laws of the State of Wisconsin, is a citizen of that state. The defendants, Victor H. Rossetti and Frank P. Doherty, are the duly qualified and acting co-executors of the estate of Genevieve Borlini Hill, now being probated in the County of Los Angeles, State of California, bearing Superior Court No. 239479. The

defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, are now and were at all times covered by these findings, residents in and citizens of the State of California.

2. The amount involved in this cause of action is the sum of \$10,060.10.

3. On or about December 2nd, 1942, the complainant in consideration of the premiums paid and to be paid by one George A. Hill, Jr., and other considerations, issued to said George A. Hill, Jr. a certain contract of life insurance designated and bearing No. 3204489, for \$10,000.00. The policy when issued to Mr. Hill contained the designation of "his children, Peter B. Hill, Joanne Hill and Patricia Hill, the direct beneficiaries, share and share alike, the survivors or survivor". There was no other beneficiary named in the policy at the initial issuance of it. The policy gave the insured the right to change beneficiaries and also provided for the right of the insured to designate both direct and contingent beneficiaries, at his option and choice. Subsequently, under date [47] of January 26th, 1944, Mr. Hill, the insured, changed the direct beneficiary from his children to "Genevieve B. Hill, wife" and under the same date designated as contingent beneficiaries, "Peter B. Hill, Joanne Hill and Patricia Hill Harder, children, share and share alike, the survivors or survivor".

4. Mr. Hill, the insured, died on November 24th, 1944. Due proof of his death was submitted to and received by the complainant insurance company. Thereafter, on January 2, 1945, the widow, Genevieve B. Hill, direct beneficiary, died without having made any election under paragraph 1a of the "special provisions" set out in the policy. This paragraph which follows another,

whereby the insured is given the right before the policy becomes payable to elect payment of the then net proceeds under options specified in the policy, read:

“Privileges of Direct Beneficiary.

1a. If when this Policy becomes payable no such election by the Insured is then in force, the Direct Beneficiary or Beneficiaries may make such election in lieu of payment in one sum and upon such an election by the Direct Beneficiary or Beneficiaries the interest of any Contingent Beneficiary designated by the Insured shall terminate. The Direct Beneficiary or Beneficiaries may then, subject to change, designate a Contingent Beneficiary or Beneficiaries under the election so made.”

5. Section 11 of the said policy provides as follows:

11. “Subject to the rights of any Assignee, the Insured (1) may designate one or more Direct Beneficiaries if none be named herein, either with or without reservation of the right to revoke such designation; and (2) may designate one or more Contingent Beneficiaries whose interest shall be as expressed in this policy; and (3) may change any Direct Beneficiary not irrevocably designated; and (4) [48] may change any Contingent Beneficiary. If there be more than one Direct Beneficiary the interest of any deceased Direct Beneficiary, including any unpaid benefits due or to become due, shall pass to the surviving Direct Beneficiary or Beneficiaries, unless otherwise directed by the Insured with the consent of the Company. Upon the death of the last surviving Direct Beneficiary the Contingent Beneficiary or Beneficiaries, if any, shall succeed to

the interest of such Direct Beneficiary, including any unpaid benefits due or to become due. If no Direct Beneficiary or Contingent Beneficiary survives the Insured the proceeds of this policy shall be payable to the executors, administrators or assigns of the Insured. No such designation, revocation, change or direction shall be effective unless duly made in writing and filed at the Home Office of the Company (accompanied by this Policy prior to or at the time this Policy shall become payable, and endorsed thereon by the Company.”

6. Paragraph 5 of “Special Provisions Relating to Settlement When This Policy Becomes Payable”, on said policy provides as follows:

5. “Upon the death of the last surviving Direct Beneficiary the then surviving Contingent Beneficiary or Beneficiaries shall succeed to the remaining benefits otherwise payable to such Direct Beneficiary, including any unpaid benefits due or to become due, except that under Option “C” such remainder shall be limited to the stipulated installments then remaining unpaid; and except also that any proceeds then held under Option “A” shall, unless the designator of such surviving Contingent Beneficiary has directed payment under either Option “B”, “C” or “D”, be paid in one sum (a) immediately in case of any [49] Contingent Beneficiary designated under Special Provisions, paragraph “1a” and (b) if and when, in case of a Contingent Beneficiary designated by the

Insured, such proceeds shall have been held under Option "A" for thirty years after the policy became payable. Where payment of such proceeds under either Option "B", "C" or "D" has been directed in lieu of payment in one sum, such elected option shall thereupon become effective."

7. It is the meanings of the said policy gathered from its whole contents that if the wife named as Direct Beneficiary should survive the insured but should die before receiving the benefits due or to become due under the policy, that all such unpaid benefits due or to become due should be paid to the said three children of the insured or to the survivor or survivors of them equally. It was the intention of Mr. Hill, the insured, as indicated by the provisions of the said policy and the surrounding circumstances under which the policy was issued and the surrounding circumstances at the time of the said change of Direct Beneficiary and the designation of the said three children as Contingent Beneficiaries to financially provide for and protect his widow during her life time and next his own children, rather than the creditors, heirs or legatees of the estate of his widow if she should survive the insured and then die before receiving the benefits due or to become due under the said policy.

8. The court has heretofore allowed to the complainant as fees for its attorneys the sum of \$250.00 and as costs the sum of \$14.00, which amount has been paid out from the registry of this court, leaving a balance of \$9,796.10.

CONCLUSIONS OF LAW

1. That the defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, are [50] entitled to the proceeds of the said policy now in the registry of the court in the sum of \$9,796.10.

2. That the defendants, Victor H. Rossetti and Frank P. Doherty, as co-executors of the estate of Genevieve Borlini Hill, are not entitled to any of the proceeds of the said policy now in the registry of the court.

3. That the claim of the defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, as set forth in their answer in this cause should be granted.

4. That the claim of the defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, should not be granted.

5. That the defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, should receive their costs of suit against the defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill.

It Is So Ordered:

Attorneys for defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, will submit appropriate judgment in accordance herewith.

Dated: November 26th, 1945.

PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Nov. 26, 1945. [51]

In the District Court of the United States for the
Southern District of California
Central Division

No. 4462-M Civil

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a corporation,

Complainant,

vs.

PETER B. HILL; JOANNE HILL, also known as Joan A. Hill; PATRICIA HILL HARDER; VICTOR H. ROSSETTI and FRANK P. DOHERTY, co-executors of the Estate of Genevieve Borlini Hill; DOE ONE; DOE TWO; DOE THREE and DOE FOUR,

Defendants.

JUDGMENT

This cause came on for trial before this court, sitting without a jury, on October 2nd, 1945. The complainant, The Northwestern Mutual Life Insurance Company, a corporation, represented by its attorneys, O'Melveny & Myers, having brought the interpleader action and having deposited in the registry of the court the sum of \$10,060.10, which was the amount due under the policy, hereinafter referred to, had been released from the case prior to the trial. Defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill and Patricia Hill Harder, were represented by their attorneys, Richard H. Forster and Chauncey E. Snow. The defendants, Victor H. Ros-

setti and Frank P. Doherty, co-executors [52] of the estate of Genevieve Borlini Hill, deceased, were represented by their attorneys, Lawler, Felix and Hall.

The court having filed its findings of fact and having made its conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed as Follows:

1. That the defendants, Peter P. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, receive the balance of the proceeds of the policy of life insurance in the sum of \$9,796.10 now in the registry of this court, equally.

2. That the clerk of this court pay to the said defendants the said sum upon payment to him of his actually accrued costs.

3. That the defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, have their costs of suit against the defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill.

4. Said costs of suit are hereby taxes at \$.....

Dated: November 26th, 1945.

PAUL J. McCORMICK

United States District Judge.

Judgment entered Nov. 26, 1945. Docketed Nov. 26, 1945, C. O. Book 35, page 721. Edmund L. Smith, Clerk; by J. M. Horn, Deputy.

[Endorsed]: Filed Nov. 26, 1945. [53]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT UNDER RULE 73(b)

Notice Is Hereby Given that defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on November 26, 1945.

Dated December 29, 1945.

LAWLER, FELIX & HALL

By John M. Hall

Attorneys for Defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill.

[Endorsed]: Filed & mailed copy to O'Melveny & Myers, Attys. for plf. and Richard H. Forster & Chauncey E. Snow, Attys. for defts. Hill et al. Dec. 29, 1945. [54]

[Title of District Court and Cause.]

SUPERSEDEAS UNDERTAKING

(under Rule 73d)

Know All Men By These Presents:

That the undersigned, Maryland Casualty Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly licensed to transact a general surety business in the State of California, is held and firmly bound unto defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, in the full and just sum of Two Thousand Dollars (\$2,000.00) to be paid to the said defen- [55] dants, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, the undersigned binds itself, and its successors, by these presents.

Sealed with our seal and dated this 28th day of December, 1945.

Whereas, lately at a District Court of the United States for the Southern District of California, Central Division, in a suit pending in said Court between The Northwestern Mutual Life Insurance Company, a corporation, complainant, and Peter B. Hill, Joanne Hill, also known as Joan A. Hill, Patricia Hill Harder, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, defendants, No. 4462-M, a judgment was rendered wherein and whereby it was ordered, adjudged and decreed that defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder, receive the balance of the proceeds of a certain policy of life insurance in the sum of \$9,796.10 now in the registry of this Court, and that the Clerk of this

Court pay to said defendants the said sum upon payment to him of his actually accrued costs, and that said defendants have their costs of suit against defendants, Victor H. Rossetti and Frank P. Doherty, as such co-executors; and

Whereas, said defendants, Victor H. Rossetti and Frank P. Doherty, as such co-executors, have filed in said Court a notice of appeal to reverse said judgment in the aforesaid suit on appeal to the United States Circuit Court of Appeals for the Ninth Circuit at a session of said Circuit Court of Appeals to be holden in the State of California;

Now, the condition of the above obligation is such, that if the said Victor H. Rossetti and Frank P. Doherty, as such co-executors, shall prosecute said appeal to effect and satisfy in full [56] any amount finally awarded said defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder in excess of said sum of \$9,796.10 now in the registry of the Court, as aforesaid, on account of said judgment or any modification thereof, and on account of the detention of said \$9,796.10, the costs of the action, costs on appeal and interest, then the above obligation shall be void, but otherwise shall remain in full force and effect.

(Corporate Seal)

MARYLAND CASUALTY COMPANY

By Frances Gray

Attorney-in-Fact

Address: Banks-Huntley Bldg.
634 S. Spring St.,
Los Angeles 14,
California.

State of California, County of Los Angeles—ss.

On this 28th day of December in the year one thousand nine hundred and Forty-Five, before me L. W. Sudmeier, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Frances Gray, known to me to be the duly authorized Attorney-in-Fact of Maryland Casualty Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Corporation, and the said Frances Gray acknowledged to me that he subscribed the name of the Maryland Casualty Company as Surety, and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Notarial Seal)

L. W. SUDMEIER

Notary Public in and for Said County and State.

My Commission Expires April 11, 1948.

Examined and Recommended for approval as provided in Rule 8.

JOHN M. HALL

Attorney for Defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, Deceased.

Approved as to form and amount.

CHAUNCEY E. SNOW

Attorneys for Defendants, Peter B. Hill, Joanne Hill, also known as Joan A. Hill, and Patricia Hill Harder.

I hereby approve the foregoing.

Dated this 29th day of Dec., 1945.

PAUL J. McCORMICK

Judge of the United States District Court.

[Endorsed]: Filed Dec. 29, 1945. [57]

[Title of District Court and Cause.]

ORDER STAYING EXECUTION UPON
APPEAL (under Rule 62d)

Defendants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, having heretofore filed their notice of appeal from the judgment herein which was entered on November 26, 1945, and having heretofore filed a supersedeas undertaking pursuant to Rule 73d, which undertaking has been approved.

It Is Ordered that execution of said judgment shall be stayed and that the \$9,796.10 now in the registry of this Court in this cause shall remain in said registry during the pendency of said appeal.

Dated December 29th, 1945.

PAUL J. McCORMICK

Judge of the United States District Court

[Endorsed]: Filed Dec. 29, 1945. [58]

In the District Court of the United States for the
Southern District of California, Central Division

No. 4462M Civil

THE NORTHWESTERN MUTUAL LIFE IN-
SURANCE COMPANY, a corporation,
Complainant,

v.

PETER B. HILL, JOANNE HILL, also known
as JOAN A. HILL, PATRICIA HILL
HARDER, VICTOR H. ROSSETTI and
FRANK P. DOHERTY, co-executors of the
estate of Genevieve Borlini Hill, DOE ONE, DOE
TWO, DOE THREE and DOE FOUR,
Defendants.

STIPULATION DESIGNATING CONTENTS
OF RECORD ON APPEAL UNDER RULE
75(f).

It Is Hereby Stipulated by the parties hereto, by
their respective counsel undersigned, that the fol-
lowing parts of the record, proceedings, and evi-
dence shall be included in the record on appeal:

1. Bill of Interpleader.
2. Permanent Injunction and Order Fixing
Counsel Fees and Costs.
3. Answer in Interpleader Action (of Victor H.
Rossetti and Frank P. Doherty, [62] as co-executors
of the estate of Genevieve Borlini Hill).

4. Answer in Interpleader Action (of Peter B. Hill, Joanne Hill and Patricia Hill Harder).

5. Entire Stenographic Report of Trial Proceedings on October 2, 1945 (the same being all of the proceedings and evidence taken at the trial, and the only matter excluded being the oral argument at the trial).

6. Copy of Policy No. 3204489 of The Northwestern Mutual Life Insurance Company referred to in said Stenographic Report and received in evidence at the trial as Defendants' Exhibit A.

7. Conclusions of the Court (dated November 13, 1945).

8. Findings of Fact and Conclusions of Law, together with direction for entry of judgment thereon.

9. Judgment.

10. Notice of Appeal to United States Circuit Court of Appeals for the Ninth Circuit Under Rule 73(b).

11. Supersedeas Undertaking (under Rule 73d).

12. Order Staying Execution Upon Appeal (under Rule 62d).

13. Stipulation Designating Contents of Record on Appeal under Rule 75(f).

14. Concise Statement of Points on Which Appellants Intend to Rely on Appeal. [63]

It Is Further Stipulated by the parties hereto, by their respective counsel undersigned, that the

facts referred to in the Stenographic Report of Trial Proceedings (item 5 above) as having been set forth in a printed memorandum and being undisputed at the trial were and are the following:

“December 2, 1942, Northwestern Mutual Life Insurance Company issued a term life insurance policy for \$10,000.00 on the life of George A. Hill, Jr. Hill was then a resident of California. Negotiations for and delivery of this policy occurred in California. The policy gave the insured the right to change the beneficiary. Early in 1944, Hill, the insured, named his wife, Genevieve B. Hill, as the ‘direct beneficiary’ under the policy, and his children, Peter B. Hill, Joanne Hill and Patricia Hill Harder, as ‘contingent beneficiary’. Hill, the insured, died on November 24, 1944. Due proof of his death was submitted to and received by the insurance company. Thereafter, on January 2, 1945, the widow Genevieve B. Hill, died.”

“The amount due on the policy is admitted to be \$10,060.10 and claim thereto has been made (1) by Victor H. Rossetti and Frank P. Doherty, executors of the widow’s estate, and (2) by the children. The insurance company joined these parties as defendants in its bill of interpleader and has paid the \$10,060.10 into the registry of this Court.”

and that such facts were and are true, except that the amount now in the registry of the Court is \$9,796.10, as stated in the judgment, there having been deducted and paid from said fund of \$10,060.10 by order of the Court, complainant’s at-

torneys' fees [64] in the sum of \$250.00 and complainant's costs in the sum of \$14.00, as stated in the Court's findings.

Dated January 2, 1946.

O'MELVENY & MYERS

By L. M. WRIGHT

Attorneys for complainant.

RICHARD H. FORSTER

CHAUNCEY E. SNOW

By CHAUNCEY E. SNOW

Attorneys for defendants and respondents, Peter B. Hill, Joanne Hill and Patricia Hill Harder.

LAWLER, FELIX & HALL

By JOHN M. HALL

Attorneys for defendants and appellants, Victor H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, deceased.

[Endorsed]: Filed Jan. 4, 1946. [65]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 65 inclusive contain full, true and correct copies of Bill of Interpleader; Permanent Injunction and Order Fixing Counsel Fees and Costs; Answer in Interpleader Action of Peter

[Title of District Court and Cause.]

Honorable Paul J. McCormick, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, October 2, 1945

Appearances:

For the Defendants Peter B. Hill, Joanne Hill, and Patricia Hill Harder: Richard H. Forster, Esq., 530 West Sixth Street, Los Angeles, California, and Chauncey E. Snow, Esq., 530 West Sixth Street, Los Angeles, California.

For the Defendants Victor H. Rossetti, and Frank P. Doherty, Co-Executors of the Estate of Genevieve Borlini Hill, Deceased: Lawler, Felix & Hall, by John M. Hall, Esq., 800 Standard Oil Building, Los Angeles, California. [1*]

Los Angeles, California, Tuesday, October 2, 1945.
10 A. M.

The Clerk: No. 4462-Civil, The Northwestern Mutual Life Insurance Company v. Peter B. Hill, et al.

Mr. Hall: Reading for the defendant executors.

Mr. Forster: Reading for the Hill children.

The Court: Proceed, gentlemen.

Mr. Forster: Your Honor, I would like to associate Chauncey Snow with me on behalf of the three Hill children who are the contingent beneficiaries.

*Page numbering appearing at top of page of original Reporter's Transcript.

The Court: So ordered. I have read the so-called pretrial memoranda and I have read the pleadings. Proceed.

Mr. Hall: I believe, your Honor, that the only evidence to be produced this morning is to introduce a copy of the insurance policy.

In my printed memorandum I set out certain facts and those facts have not been disputed. Mr. Snow made reference to one additional fact which I will let him call attention to, and which I am ready to stipulate to. That leaves nothing further in the way of evidence except to place before your Honor the insurance policy. Mr. Wright, representing the complainant, is here with a copy of the policy to be put in evidence.

Have you seen this, Mr. Snow?

Mr. Snow: Yes. That comes upon Mr. Wright's suggestion. [2]

Mr. Hall: This copy of the policy, which is No. 3204489, does not contain the original applications of the insured for the policy, which were attached to the original policy. However, I think Mr. Snow will agree that those particular applications have no bearing upon our controversy.

Mr. Snow: It is so agreed.

Mr. Hall: I offer in evidence the copy of the policy.

The Court: I will be received.

The Clerk: That will be Defendants' Exhibit A.

(The document referred to was marked as Defendants' Exhibit A, and was received in evidence.)

[DEFENDANTS' EXHIBIT A]

THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY
of Milwaukee, Wisconsin

[Crest]

No. 3204489

Age 49

In Consideration of the payment of a Premium of Forty-Eight and 50/100 Dollars, the receipt of which is hereby acknowledged, and of the payment of a like sum on or before the 2nd day of December, March, June and September in every year for five years from the date of this Policy or until the prior death of

GEORGE A. HILL, JR.

of San Marino, California (hereinafter called the Insured), and immediately upon receipt of due proof of the death of the Insured, if such death shall occur within said five years, The Northwestern Mutual Life Insurance Company (hereinafter called the Company), promises to pay at its Home Office the sum of Ten Thousand Dollars, less any unpaid premium or premiums to the end of the current policy year, to His Children, Peter B., Joanne and Patricia Hill, the Direct Beneficiaries, Share and Share Alike, the Survivors or Survivor, with reservation to the Insured of the right of revocation and change of Direct Beneficiary.

This Policy is issued by the Company and accepted by the parties in interest subject to the provisions stated on the consecutively numbered pages hereof which are hereby made a part of this contract.

(Defendants' Exhibit A)

In Witness Whereof the Company has caused this Policy to be executed at Milwaukee, Wisconsin, this 2nd day of December, 1942.

G. L. Anderson
Secretary

[Illegible]
President

Attest: [Illegible]
Registrar

DD. 7.

Non-Renewable
FIVE YEAR TERM POLICY
(Convertible Within Five Years)
Premiums Payable for Five Years or Until Prior
Death of Insured
Dividends Payable Annually

[Page 2]

ENDORSEMENTS

Note—No designation, revocation or change of Beneficiary; and no election, direction, revocation or change under the Special Provisions Relating to Settlement, shall be effective unless made in writing, filed with the Company and endorsed as hereinafter provided.

The provisions of the two supplements dated January 26, 1944, attached hereto are made a part of this policy.

[Illegible]
Registrar

February 7, 1944
MF/K

(Defendants' Exhibit A)

[Page 3]

GENERAL PROVISIONS

- Policy and Application Entire Contract. 1. This Policy and the application therefor (a copy of which is attached hereto) constitute the entire contract between the parties. All statements made by the Insured in applying for this Policy shall, in the absence of fraud, be deemed representations and not warranties, and no statement by or on behalf of the Insured shall avoid this Policy or be used in defense of a claim hereunder unless it is contained in the said application and a copy thereof is attached to this Policy when issued.
- Agents. 2. No agent of the Company is authorized to waive forfeitures or to make, alter or discharge contracts, or to extend the time for payment of premium.
- Reserve. 3. The reserve on this Policy shall be in accordance with the American Experience Table of Mortality with interest at three per cent.
- Suicide. 4. If within two years from the date hereof the Insured shall died by his or her own hand, whether sane or insane, the liability of the Company under this Policy shall be limited to the amount of the reserve hereon.
- Incontest-ability. 5. Except for non-payment of premium this Policy shall be incontestable after it has been in force during the life time of the Insured for a period of two years from its date of issue. If the age of the Insured has been misstated the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.
- Premium Payments. 6. All premiums shall be payable in advance at the Home Office of the Company in Milwaukee, Wis-

(Defendants' Exhibit A)

consin, or to an authorized agent upon delivery of a receipt signed by the President or Secretary of the Company and countersigned by such agent. The insurance under this Policy is based upon annual premiums but payment may be made on a semi-annual or a quarterly basis at the published rates now in use by the Company. Change will be made upon suitable request on any anniversary of the date hereof. Upon default in the payment of any premium this Policy shall cease and determine except as hereinafter provided.

Grace. 7. If any premium is not paid on or before the day it is due the Policy is in default; but a grace period of thirty-one days, during which period the insurance will continue in full force, shall be allowed for the payment of every premium except the first.

Reinstatement. 8. In event of non-payment of premium when due or within the grace period this Policy may be reinstated at any time within three years succeeding default in premium payment, but not later than five years from its date, upon evidence satisfactory to the Company of the insurability of the Insured and payment of all past due premiums with interest from the due date or dates at the rate of five per cent. per annum.

Dividend Options. 9. This Policy while in force shall participate annually in the divisible surplus of the Company. The Company will annually determine the dividend of such surplus equitably apportionable hereto but payment of the first dividend shall be contingent upon and proportionate to the premium or premiums due and paid for the second policy year. At the option of the Insured any dividend of surplus payable may be: (a)

(Defendants' Exhibit A)

paid in cash; (b) applied towards the payment of premium hereon; (c) left to accumulate while this Policy is in force with interest credited annually at such rate, not less than 2½ per cent., as may be determined by the Company, and subject to withdrawal in cash at any time or payment with the proceeds of the Policy. If this Policy shall become payable by the death of the Insured any annual dividend otherwise payable at the end of the policy year will be paid with the proceeds of the Policy. Unless the Insured shall otherwise elect in writing dividends will be paid in cash.

10. No assignment of this Policy shall be binding upon the Company until filed with the Company at its Home Office. The Company will assume no responsibility for the validity or effect of any assignment.

11. Subject to the rights of any Assignee, the Insured (1) may designate one or more Direct Beneficiaries if none be named herein, either with or without reservation of the right to revoke such designation; and (2) may designate one or more Contingent Beneficiaries whose interest shall be as expressed in this Policy; and (3) may change any Direct Beneficiary not irrevocably designated; and (4) may change any Contingent Beneficiary. If there be more than one Direct Beneficiary the interest of any deceased Direct Beneficiary, including any unpaid benefits due or to become due, shall pass to the surviving Direct Beneficiary or Beneficiaries unless otherwise directed by the Insured with the consent of the Company. Upon the death of the last surviving Direct Beneficiary the Contingent Bene-

(Defendants' Exhibit A)

Designations,
Revocations,
Changes,
Etc.

ficiary or Beneficiaries, if any, shall succeed to the interest of such Direct Beneficiary, including any unpaid benefits due or to become due. If no Direct Beneficiary or Contingent Beneficiary survives the Insured the proceeds of this Policy shall be payable to the executors, administrators or assigns of the Insured. No such designation, revocation, change or direction shall be effective unless duly made in writing and filed at the Home Office of the Company (accompanied by this Policy) prior to or at the time this Policy shall become payable, and endorsed hereon by the Company.

Conversion
to Another
Plan.

12. Without the consent or participation of any Direct Beneficiary or any Contingent Beneficiary, this Policy may be converted without medical examination to a Policy of not greater amount on any annual premium Life or Endowment plan as issued by the Company subject to the following conditions:

12a. Within three years from the date hereof the new Policy may be issued as of the date of this Policy upon a form now in use, the premium to conform to the present published rate of the Company for the plan selected at the present age of the Insured; upon payment of the difference in past premiums for the amount of insurance converted with interest at the rate of five per cent. per annum, less corresponding difference in dividends.

12b. Within five years from the date hereof the new Policy may be issued as of the date of the conversion upon a form then in use with premium for the attained age of the Insured conforming to the then published rate of the

(Defendants' Exhibit A)

Company for the plan selected; the first annual premium on the new policy to be paid less the then reserve on the amount of insurance converted hereunder and a due share in the dividend apportionment for the year.

When Effective.

12c. Conversion shall be effective upon suitable request and payment of the amount required with due surrender of this Policy while in force prior to the expiration of five years from the date hereof. Any Direct Beneficiary or Contingent Beneficiary designated herein shall be similarly named with like interest in the new Policy.

.7.

[Page 4]

SPECIAL PROVISIONS RELATING TO SETTLEMENT WHEN THIS POLICY BECOMES PAYABLE.

Options of Settlement.

1. The Insured shall have the right, with the privilege of change before this Policy becomes payable, to elect payment of the then net proceeds, in whole or in part, under either Option "A", "B", "C" or "D", or under two or more of said options.

Privileges of Direct Beneficiary.

1.a If when this Policy becomes payable no such election by the Insured is then in force, the Direct Beneficiary or Beneficiaries may make such election in lieu of payment in one sum and upon such an election by the Direct Beneficiary or Beneficiaries the interest of any Contingent Beneficiary designated by the Insured shall terminate. The Direct Beneficiary or Beneficiaries may then, subject to change, desig-

(Defendants' Exhibit A)

nate a Contingent Beneficiary or Beneficiaries under the election so made.

Limit of
Amounts.

2. If the net proceeds of this Policy shall be less than \$1000 or the performance of an election would result in periodical minimum payments less than \$10, the Company may deem the election ineffective and settlement may be made by payment of the proceeds or the then commuted value in one sum.

orsement.

3. No election, designation, direction, revocation or change shall be effective unless duly made in writing and filed at the Home Office of the Company (accompanied by this Policy), and endorsed hereon by the Company, nor shall Options "A", "C" and "D" be available to any beneficiary not a natural person taking benefit in his or her own right.

Deceased
Direct
Beneficiary.

4. If there be more than one Direct Beneficiary living when this Policy becomes payable the share of any such beneficiary thereafter deceased, including any unpaid benefits due or to become due, shall pass to the surviving Direct Beneficiary or Beneficiaries unless otherwise directed by the Insured with the consent of the Company; except that under Option "C" the interest so passing shall be limited to the stipulated installments then remaining unpaid.

ontingent
Beneficiary.

5. Upon the death of the last surviving Direct Beneficiary the then surviving Contingent Beneficiary or Beneficiaries shall succeed to the remaining benefits otherwise payable to such Direct Beneficiary, including any unpaid benefits due or to become due, except that under Option "C" such remainder shall be limited to the stipulated installments then remaining unpaid; and except also that any proceeds then held under Option "A" shall, unless the designator

(Defendants' Exhibit A)

of such surviving Contingent Beneficiary has directed payment under either Option "B", "C" or "D", be paid in one sum (a) immediately in case of any Contingent Beneficiary designated under Special Provisions, paragraph "1a" and (b) if and when, in case of a Contingent Beneficiary designated by the Insured, such proceeds shall have been held under Option "A" for thirty years after the Policy became payable. Where payment of such proceeds under either Option "B", "C" or "D" has been directed in lieu of payment in one sum, such elected option shall thereupon become effective.

Last
surviving
beneficiary.

6. At the death of the last surviving Direct Beneficiary if there be no Contingent Beneficiary then in being, or at the death of the last surviving Contingent Beneficiary occurring subsequently thereto, any amount retained by the Company under Option "A"; any remainder of the fund under Option "D"; the commuted value, on the basis of compound interest at $2\frac{1}{2}$ per cent, per annum, of any limited installments under Option "B" or any stipulated installments under Option "C", then remaining unpaid; shall, unless otherwise directed by the designator with the consent of the Company, be paid in one sum to the executors, administrators or assigns of such last surviving Direct Beneficiary or Contingent Beneficiary upon due surrender of this Policy.

commutation
and
withdrawal

7. The person then entitled as beneficiary shall upon due surrender of this Policy have the right at any time, provided the designator of such beneficiary shall not have specifically withheld such right, to withdraw any proceeds held by the Company under Option "A"; the commuted value, determined as pro-

(Defendants' Exhibit A)

vided in Special Provisions, paragraph "6", of any unpaid installments under Option "B" or any remainder of the fund under Option "D". Benefits under Option "C" shall not be subject to commutation and withdrawal.

Proceeds
Conserved
at Interest

8. OPTION A: Subject to the limitations contained in Special Provisions, paragraph "5", to have the whole or any designated part of the net proceeds held by the Company, the Company in the meantime to pay interest thereon monthly at the minimum rate of \$2.06 per \$1000 of the amount so held, the first payment being due one month after date of death of Insured or the date of election if subsequent.

Limited
Installments.

9. OPTION B: To have the whole or any designated part of the net proceeds paid in a specified number of monthly minimum installments as per the Limited Installment Table below, which shall apply pro rata per \$1000 of the amount to be so paid, the first installment being payable as of the date of death of Insured or the date of election if subsequent.

Limited
Installment
Table.

OPTION "B," LIMITED INSTALLMENT
TABLE

Number of monthly Installments.....	12	24	36	48	60	72	84	96	108	120	132	144	156
Amount of each.....	\$84.28	\$42.66	\$28.79	\$21.86	\$17.70	\$14.93	\$12.95	\$11.47	\$10.32	\$9.39	\$8.64	\$8.02	\$7.49
Number of monthly Installments.....	168	180	192	204	216	228	240	252	264	276	288	300	360
Amount of each.....	\$7.03	\$6.64	\$6.30	\$6.00	\$5.73	\$5.49	\$5.27	\$5.08	\$4.90	\$4.74	\$4.60	\$4.46	\$3.93

Installments
Continuous
for-Life.

10. OPTION C: To have the whole or any designated part of the net proceeds paid in either 120, 180 or 240 stipulated monthly minimum installments

(Defendants' Exhibit A)

of the amount stated in the Continuous Installment Table corresponding to the sex and the age of the then beneficiary on the date of payment of the first of such installments, provided that if such beneficiary shall survive to receive the number of stipulated installments selected, payments of like amount and frequency shall continue during the lifetime of the beneficiary. The table shall apply pro rata per \$1000 of the amount to be so paid, the first installment being payable as of date of death of Insured or the date of election if subsequent. If there be two or more beneficiaries the amount payable, unless otherwise directed by the designator, shall be divided into a corresponding number of equal parts and the installments to each beneficiary will be similarly determined according to age and sex by the Continuous Installment Table. Payment under this option shall be subject to satisfactory proof of the age of the beneficiary thereunder.

7 & 10.

[Page 5]

OPTION "C," CONTINUOUS INSTALLMENT TABLE

Continuous Installment Table.	Age of Beneficiary	Number of Monthly Installments Stipulated					
		120		180		240	
		Male	Female	Male	Female	Male	Female
20 and under		\$3 22	\$3 11	\$3 21	\$3 10	\$3 20	\$3 09
21		3 25	3 13	3 24	3 12	3 23	3 11
22		3 28	3 15	3 27	3 14	3 25	3 13

(Defendants' Exhibit A)

23	3 30	3 17	3 29	3 17	3 28	3 16
24	3 33	3 20	3 32	3 19	3 31	3 18
25	3 36	3 22	3 35	3 21	3 34	3 20
26	3 40	3 25	3 38	3 24	3 36	3 23
27	3 43	3 28	3 42	3 27	3 40	3 25
28	3 46	3 30	3 45	3 29	3 43	3 28
29	3 50	3 33	3 48	3 32	3 46	3 31
30	3 54	3 36	3 52	3 35	3 49	3 34
31	3 58	3 40	3 56	3 38	3 53	3 36
32	3 62	3 43	3 60	3 42	3 57	3 40
33	3 66	3 46	3 64	3 45	3 60	3 43
34	3 71	3 50	3 68	3 48	3 64	3 46
35	3 75	3 54	3 72	3 52	3 68	3 49
36	3 80	3 58	3 77	3 56	3 72	3 53
37	3 85	3 62	3 82	3 60	3 76	3 57
38	3 91	3 66	3 87	3 64	3 81	3 60
39	3 96	3 71	3 92	3 68	3 85	3 64
40	4 02	3 75	3 97	3 72	3 90	3 68
41	4 08	3 80	4 02	3 77	3 95	3 72
42	4 14	3 85	4 08	3 82	4 00	3 76
43	4 20	3 91	4 14	3 87	4 05	3 81
44	4 27	3 96	4 20	3 92	4 10	3 85
45	4 34	4 02	4 26	3 97	4 15	3 90
46	4 42	4 08	4 33	4 02	4 20	3 95
47	4 49	4 14	4 39	4 08	4 25	4 00
48	4 57	4 20	4 46	4 14	4 31	4 05
49	4 65	4 27	4 53	4 20	4 36	4 10
50	4 74	4 34	4 60	4 26	4 42	4 15
51	4 83	4 42	4 68	4 33	4 48	4 20
52	4 92	4 49	4 75	4 39	4 53	4 25
53	5 02	4 57	4 83	4 46	4 59	4 31
54	5 12	4 65	4 91	4 53	4 65	4 36
55	5 22	4 74	4 99	4 60	4 70	4 42
56	5 33	4 83	5 08	4 68	4 76	4 48

(Defendants' Exhibit A)

57	5 44	4 92	5 16	4 75	4 82	4 53
58	5 56	5 02	5 25	4 83	4 87	4 59
59	5 68	5 12	5 33	4 91	4 92	4 65
60	5 80	5 22	5 42	4 99	4 98	4 70
61	5 93	5 33	5 51	5 08	5 03	4 76
62	6 06	5 44	5 60	5 16	5 08	4 82
63	6 20	5 56	5 68	5 25	5 12	4 87
64	6 34	5 68	5 77	5 33	5 17	4 92
65	6 48	5 80	5 85	5 42	5 21	4 98
66	6 63	5 93	5 94	5 51	5 25	5 03
67	6 77	6 06	6 02	5 60	5 28	5 08
68	6 92	6 20	6 10	5 68	5 32	5 12
69	7 08	6 34	6 18	5 77	5 34	5 17
70	7 23	6 48	6 25	5 85	5 37	5 21
71	7 38	6 63	6 32	5 94	5 40	5 25
72	7 53	6 77	6 38	6 02	5 42	5 28
73	7 69	6 92	6 45	6 10	5 44	5 32
74	7 84	7 08	6 50	6 18	5 45	5 34
75 and over	8 00	7 23	6 56	6 25	5 47	5 37

Fixed 11. OPTION D: To have the whole or any desig-
 tallments. nated part of the net proceeds held by the Company
 as a fund to be credited annually with interest at the
 minimum rate of 2½ per cent. per annum on the
 balance in hand and from which shall be paid, until
 the fund is exhausted, equal monthly installments
 (first installment payable as of date of death of In-
 sured or the date of election if subsequent) of such
 fixed amount, not less than \$5.00 per \$1000 of the
 proceeds so retained, as shall have been elected, the
 final installment not to exceed the then unpaid re-
 mainder.

(Defendants' Exhibit A)

Participation. 12. Interest payments under Option "A"; the second and subsequent installments under Option "B"; the second and subsequent stipulated installments under Option "C"; and the fixed installment fund under Option "D" will be subject to increase by such dividends as may be apportioned by the Company.

Possession of Policy. 13. During settlement under the Special Provisions this Policy shall remain in the possession of the beneficiary or beneficiaries thereunder.

Annual, Semi-Annual, Quarterly Payments. 14. Upon suitable request and endorsement, the mode of payment under Options "A", "B", "C" and "D" may be changed to equivalent quarterly, semi-annual or annual payments.

DD. 7 & 10.

[Page 6]

Agreement attached to and made a Part of Policy
No. 3204489

(hereinafter called the Policy)

WAR AND AVIATION RESTRICTION CLAUSE

It is agreed that said Policy shall be subject to the modifications, restrictions, limitations, exclusions and conditions herein set forth, to wit:

1. Anything in this Policy to the contrary notwithstanding and while said Policy continues in force the liability of the Company in any one or more of the events stated in the following provisions designated "1a", "1b", and "1c" shall be restricted and limited to the greater amount of (i) the gross premiums charged as due and paid on the Policy less any annual dividends paid or credited and less also any indebtedness to the Company (in-

(Defendants' Exhibit A)

cluding interest due or accrued) on account of the Policy which has not been repaid in cash; or (ii) the reserve on the Policy including any paid-up additions thereto and any dividends standing to the credit of the Policy and less any indebtedness on account of the Policy including interest due or accrued; provided, however, that the liability as so restricted shall not exceed the amount otherwise payable if this agreement were not a part of the Policy. The liability of the Company shall be restricted as aforesaid in the event of:

1a. The death of the Insured outside the forty-eight states of the United States, the District of Columbia and the Dominion of Canada (such territory hereinafter called the Home Areas) (i) while in the military, naval or air forces of any country at war, declared or undeclared, or any ambulance, medical, hospital or civilian non-combatant unit serving with such forces; or (ii) death either outside or inside the Home Areas occurring within six months after termination of service outside of the Home Areas in such forces or units as the result of a service connected cause.

1b. The death of the Insured within two years from the date of issue of the Policy as a result of any act of war, declared or undeclared, when the cause of death occurs while the Insured is outside the Home Areas and the Insured dies either outside such Home Areas or within six months after returning thereto.

1c. The death of the Insured resulting from his or her occupation as pilot, co-pilot or student pilot or member of the crew or in any capacity connected with the operation of any aircraft, or from transportation in an aircraft other than as a fare-paying passenger of an established air line.

(Defendants' Exhibit A)

2. It is further agreed that any provision in or attached to this Policy notwithstanding, the risk of benefits contingent upon proof of the physical or mental disability of the Insured is a risk not covered by the Policy if such disability is a consequence of wounds, injuries or disease suffered or contracted as a result of any of the services or any act of war as specified in the provisions herein designated "1a" and "1b", or any of the occupations specified in provision "1c", or transportation in any aircraft except as a fare-paying passenger of an established air line.

3. It is further agreed as a condition to issuance that the incontestability provision contained in the Policy is hereby amended to read "Except for non-payment of premium this Policy shall be incontestable after it has been in force during the lifetime of the Insured for a period of two years from its date of issue, and except as to any provision of the War and Aviation Agreement. If the age of the Insured has been misstated the amount, if any, payable hereunder shall be such as the premium paid would have purchased at the correct age."

In Witness Whereof The Northwestern Mutual Life Insurance Company has caused this Agreement to be executed at Milwaukee, Wisconsin, this 2nd day of December, 1942.

War and Aviation
Agreement

Form DD. 690
April 1942

G. L. Anderson
Secretary

[Illegible]
President

Attest: [Illegible]
Registrar

(Defendants' Exhibit A)

[Stamped]: Pol. Hg. Div. 1 1944 Feb 7 AM 11 44
(1197-CP)

(For Use in States Having Community Property Laws)

CHANGE AND DESIGNATION OF DIRECT
BENEFICIARY

In Policies Now Issued in
THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY
Milwaukee, Wisconsin

N. B.—Read footnotes carefully before filling in
this request.

Pasadena, Calif. January 26, 1944
(Place and date)

Said Company is requested by the undersigned to designate

Genevieve B. Hill

(Print name in full)

wife ,.....

(Relationship to insured) (For two, enter "share and share alike, or the survivor;" for
three or more, "share and share alike, the survivors or survivor")

as direct beneficiary under policy No. 3204489 with reser-
vation of the right on the part of the insured to change
such designation; it being expressly agreed that the fur-
ther right shall be reserved to the insured to obtain loans
from said Company upon security of said policy, or to
surrender the same for its cash value, without the con-
sent or participation of any direct beneficiary not now or
hereafter irrevocably designated. The prior designation
of direct beneficiary is hereby revoked.

(Defendants' Exhibit A)

contingent beneficiary designation now effective and waive all community property rights inconsistent therewith.

Signature of Spouse of Insured

1. If the proposed direct beneficiary is to be irrevocably designated, substitute the word "without" for the word "with" in the fourth line such change to be duly authenticated by the initials of the insured. An irrevocable designation of a minor may tie up the policy during minority, and any such designation must be accompanied by a statement by the insured that the result of such action is fully understood.
2. This form should not be used for change or correction in a direct beneficiary's name. Submit a statement by the insured.
3. If the irrevocable interest of a wife as direct beneficiary is being terminated with her consent, her signature must be duly acknowledged. (See Par. 143—Rules and Instructions.)
4. This form should be completed as indicated, executed by the insured alone, or jointly with other parties required to effect the change and forwarded to the Home Office. Unless the policy is in the Company's possession, it must be submitted for suitable endorsement.
5. Where the parties are divorced and the insurance is to be set over to one of them, a special form will be furnished by the Home Office upon receipt of full information.

(3-43)

(Defendants' Exhibit A)

[Stamped]: Pol. Hg. Div. 1 1944 Feb 7 AM 11 44 121
(1197A-CP)

(For Use in States Having Community Property Laws)

DESIGNATION OF CONTINGENT BENEFICIARY

In Policies Now Issued or Applied for in
THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY

Milwaukee, Wisconsin

N. B.—Read footnotes carefully before filling in
this request.

Pasadena, Calif. January 26, 1944
(Place and date)

I hereby designate

Peter B. Hill, Joanne Hill, and Patricia Hill Harder
(Print name in full)

children, share & share alike, the survivors or survivor
(Relationship) (For two, enter "share and share alike, or the survivor;" for three or
more, "share and share alike, the survivors or survivor")

as contingent beneficiary under policy No. 3204489 issued,
or applied for, on my life, with reservation of the right
on my part to revoke or change such designation; it being
expressly agreed that the further right is reserved to
me to obtain loans from said Company upon security of
said policy, or to surrender the same for its cash value,
without the consent or participation of any contingent
beneficiary.

All prior designations, if any, of contingent benefi-
ciaries and settlement options as applying to such con-
tingent beneficiaries are hereby revoked and settlement
with the herein designated contingent beneficiary shall be
in one sum unless now or hereafter otherwise directed.
(See footnote 1.)

(Defendants' Exhibit A)

The rights of any payee herein designated shall be subject and subordinate to any indebtedness on account of said policy in favor of said Company.

Said Company is hereby requested and directed to make the foregoing provisions a part of the policy.

If this request supplements an application for insurance, said Company is authorized to insert herein the number of the policy, if issued.

Community Property Rights—The insurance under the said policy is subject to any community property rights of any spouse of the insured unless such rights are waived in writing by such spouse and the waiver filed at the Home Office of the Company; but such spouse may, in the space provided below, consent to the foregoing designation, concur in the direct beneficiary designation now effective and in any settlement options as applying to such direct beneficiary designation and waive all community property rights inconsistent with such designations. *If the insurance is to be dealt with exclusive of any and all community property rights and interests of the spouse of the insured, Doc. 1478-CP should be executed by the spouse and filed at the Home Office of the Company. (See footnote 6.)*

Witnesses:

[Illegible]

Geo. A. Hill Jr.

Designator sign here

.....
For a Valuable Consideration, I hereby consent to the foregoing designation of contingent beneficiary, concur

(Defendants' Exhibit A)

in the direct beneficiary designation now effective and in any settlement options as applying to such direct beneficiary designation and waive all community property rights inconsistent with such designations.

Signature of Spouse of Insured

1. If a settlement option for the contingent beneficiary is to be made effective under the policy, the designator's carefully prepared request giving specific directions should accompany this document.

2. If more than one policy is to be issued upon an application, the designator should state under which policy or policies the contingent beneficiary is to be named.

3. If the wife of the designator is named direct beneficiary, and if in addition to the nomination of their present children as contingent beneficiaries, other children born of the marriage are to be included, the names of the present children should be followed by "and any other child or children born of my marriage to (wife's name), share and share alike, the survivors or survivor." A female insured may designate her present children by name followed by "and any other child or children born to me, share and share alike, the survivors or survivor."

4. This request should be dated, signed, witnessed and forwarded to the Home Office. Unless the policy is in the Company's possession it must be forwarded with the request for the required endorsement.

6. Where the parties are divorced and the insurance is to be set over to one of them, a special form will be furnished by the Home Office upon receipt of full information.

(Defendants' Exhibit A)

THE NORTHWESTERN MUTUAL
LIFE INSURANCE COMPANY

of Milwaukee, Wisconsin

Number	Amount
3 204 489	\$10,000

INSURING LIFE OF
GEORGE A. HILL, JR.

Date December 2, 1942

Age 49

PREMIUMS PAYABLE QUARTERLY
EQUIVALENT PREMIUM BASES*

Paragraph 6 of General Provisions, Page 3

Annual \$.....

Semi-Annual \$.....

Quarterly \$48.50

*Includes Extra Premiums if Any.

The General Election of Trustees of the Com-
pany is held annually at its Home Office in
Milwaukee the third Wednesday of July. Policy-
holders are entitled to vote at such elections.

Non-Renewable

FIVE YEAR TERM POLICY

(Convertible Within Five Years)

Premiums Payable for Five Years

or Until Prior Death of Insured

Dividends Payable Annually

TRinity 3821

Special Agent

ALFRED C. DUCKETT

Edwards & Wildey Bldg.

(Third Floor)

Los Angeles

[Stamped]: Murphy & Mage, Gen'l Agts. 609 So.
Grand Ave. Los Angeles, Cal.

[Endorsed]: Filed Nov. 13, 1945.

Mr. Snow: Your Honor please, just on that subject, Mr. Wright is here to preserve the interests of the insurance company, and if it can be so ordered, he should like to take the original policy back by substituting a photostat copy, so we would ask the court if the photostat copy may be substituted in lieu of the original, by stipulation of counsel.

Mr. L. M. Wright: I believe the document furnished was a copy. I still have the original.

Mr. Snow: Then I shall withdraw that statement.

The Court: I should like to see the original, gentlemen.

Mr. Snow: I thought it was the original that had been submitted.

The Court: It may be left here, and then it may be withdrawn at the conclusion of the case, Mr. Wright. [3]

Mr. Snow: Will that satisfy you?

Mr. Wright: Certainly.

The Court: I think the original should be marked as an exhibit in the case and then withdrawn later on. I will examine it a little more carefully later.

Proceed, gentlemen.

Mr. Snow: Then perhaps, your Honor, at this moment, under Mr. Hall's suggestion, we should call the court's attention to this additional fact, which we believe should be a part of the stipulation, which is that the wife, the direct beneficiary, did not make an election, as provided under Section 1a of the Special Provisions of the Policy. I believe Mr. Hall said, so far as he was concerned, he would so stipulate that that is the fact.

Mr. Hall: I will so stipulate.

The Court: So understood, without further proof. Proceed.

Mr. Snow: Now, if your Honor please, we should like to know just who is to go ahead on the matter. We have had some difficulty in deciding who is the first and who is the second. We are both standing on about equal bases, claiming the proceeds, and whatever procedure your Honor directs I am sure we will be very happy to follow.

The Court: I presume there is no set procedure. I have never known of any. Probably the most satisfactory would be to take the pleadings chronologically. [4]

Mr. Snow: We filed the first answer, I believe, and Mr. Hall filed the first brief, so that is how it stands.

The Court: I don't think it makes any difference, but there must be some way in which the case can proceed in an orderly manner.

Mr. Snow: I think whatever your Honor would indicate would be satisfactory.

Mr. Hall: That is satisfactory to me, whatever your Honor would suggest.

The Court: Very well. We will follow that practice which we have in other interpleader cases. I have never had any one call to the court's attention any fixed procedure applicable to all cases.

Mr. Snow: May we then present our argument?

The Court: Yes.

(Argument on behalf of Defendants Peter B. Hill, Joanne Hill and Patricia Hill Harder by Mr. Snow.)

* * *

The Court: May I interrupt you as you go along?

Mr. Snow: I would appreciate it if you would do that, your Honor.

The Court: If it disconcerts you I should not want to do it.

Mr. Snow: Not in the least, your Honor.

The Court: At the time of the passing of the widow, had [5] the proofs of loss been filed?

Mr. Snow: Yes, your Honor. The facts set out in the briefs stipulate that proof of death had been filed and proceeds had not been paid out by the insurance company.

The Court: The ages of these children of the first marriage of the insured I haven't been able to find. I haven't examined the policy, of course, because it wasn't before the court. There isn't anything in the record to show the ages of those children.

Mr. Snow: I regret to state that I personally don't know their ages either.

I don't think there is anything in the provisions of the policy that state that fact, but I had not discovered that the point would make any difference in the determination of the issues. It might, Mr. Forster suggests, make some difference in the payment of the money, but there is no provision which has been called to my attention where it would make any difference.

Would your Honor like that information presented?

The Court: Yes, I think so.

Mr. Snow: May it be understood that we can get it and supply it as a statement of fact, and submit it as a part of the evidence?

Mr. Hall: So stipulated.

The Court: So understood. [6]

(Further argument by Mr. Snow.)

(Argument on behalf of Defendants Victor H. Rossetti and Frank P. Doherty, by Mr. Hall.)

Mr. Forster: All of the children are adults, your Honor. I have the birthdays. They were not at the date of death.

Mr. Snow: It has now been supplied to us, and I take it we can accept it as a fact, that Joanne Hill was born on May 18, 1922; that Patricia Hill was born on April 12, 1921; and that Peter Hill was born on February 18, 1924.

(Further argument by Mr. Snow.)

The Court: The matter will be submitted for decision. I will return the policy to Mr. Wright. At the time of the entry of the interlocutory decree, Mr. Wright—

Mr. Wright: Yes, sir.

The Court: —was the policy canceled when the money was deposited?

Mr. Wright: I believe that is correct.

The Court: It should have been.

Mr. Hall: I think that was discussed, and was done. I believe that was the request made in the complaint.

Mr. Wright: That is correct.

The Court: I just examined the files so hurriedly I did not observe that there had been anything in the record to show that had been done.

Mr. Wright: I believe you are correct, your Honor. [7] I believe that that was done in the interlocutory order; also issuance of a permanent injunction restraining the parties from bringing suit in any state or federal court other than this court.

The Court: I think the original policy should have been filed as an exhibit in the case and then canceled, and then a photostat substituted.

Mr. Wright: I would appreciate in the final judgment some provision relative to cancellation of the policy.

Mr. Hall: Pardon me, your Honor, may I ask one question? If it should occur that judgment is rendered and the proceeds are to be paid out, say, to the executors of the estate, as an assumption, would they be paid promptly or would there be some stay?

The Court: I think so. Would it be agreeable to both sides to stay the execution at least ten days?

Mr. Snow: Yes.

Mr. Hall: Thank you, your Honor. If that may be a part of the stipulation?

The Court: So ordered. [8]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 21 day of December A. D., 1945.

MARIE G. ZELLNER

Official Reporter

[Endorsed]: Filed Dec. 27, 1945.

[Endorsed]: No. 11235. United States Circuit Court of Appeals for the Ninth Circuit. Victory H. Rossetti and Frank P. Doherty, co-executors of the estate of Genevieve Borlini Hill, Appellants, vs. Peter S. Hill, Joanne Hill, also known as Joan A. Hill, Patricia Hill Harder and The Northwestern Mutual Life Insurance Company. Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed January 19, 1946.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11235

VICTOR H. ROSSETTI and FRANK P. DOHERTY,
co-executors of the estate of Genevieve Borlini Hill,
Appellants,

v.

PETER B. HILL, JOANNE HILL, also known as
JOAN A. HILL, PATRICIA HILL HARDER, and
THE NORTHWESTERN MUTUAL LIFE INSUR-
ANCE COMPANY, a corporation,
Appellees.

STATEMENT OF POINTS ON WHICH APPEL-
LANTS INTEND TO RELY ON APPEAL.

To: The Honorable the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit;
and Honorable Paul P. O'Brien, Clerk of That
Court:

Come now appellants herein, and in accordance with
paragraph 6 of Rule 19 of this Court file with the Clerk
of this Court their concise statement of the points on
which appellants intend to rely on their appeal herein:

1. That the District Court erred in interpreting the
policy so as to award the proceeds thereof to insured's
children (contingent beneficiaries) instead of to the exe-
cutors of the estate of his wife (direct beneficiary).

2. That the District Court erred in finding that it was
insured's intention to financially provide for and protect
by the policy his children (contingent beneficiaries) rather

than the creditors, heirs or legatees of the estate of his wife (direct beneficiary) if she should survive the insured but die before receiving the proceeds of the policy.

Respectfully submitted,

VICTOR H. ROSSETTI and
FRANK P. DOHERTY,

Co-Executors of the Estate of Genevieve Borlini
Hill, Appellants,

By LAWLER, FELIX & HALL

By John M. Hall

Their Attorneys.

Receipt of a copy of the foregoing Statement of Points is acknowledged. January 14th, 1946. O'Melveny & Myers, by L. M. Wright, Attorneys for Appellee, The Northwestern Mutual Life Insurance Company. January 14th, 1946. Richard H. Forster, Chauncey E. Snow, by Chauncey E. Snow, HOW, Attorneys for Appellees, Peter B. Hill, Joanne Hill and Patricia Hill Harder.

[Endorsed]: Filed Jan. 19, 1946. Paul P. O'Brien,
Clerk.

